IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.473 of 2007

Mohan Suresh Chouhan — Applicant
Vs.
State of Maharashtra — Respondent

Ms.Sarojini Upadhyay, Advocate appointed for the applicant.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 20, 2007.

P.C.

. Heard Ms.Upadhyay, the learned appointed Advocate for the applicant. Perused the affidavit in reply filed by the learned APP.

. The applicant came to be convicted in three different Sessions Cases by three different trial Courts. In S.C.No.82 of 2003 decided on 12/4/2004 he has been sentenced to suffer RI for five years, in S.C. No.65 of 2003 decided on 17/4/2004 he has been sentenced to suffer RI for three years and in S.C. No.106 of 2003 decided on 27/7/2005 he has been sentenced to suffer RI for three years. All the three cases had arisen from three different CRs registered with different Police Stations and the

Sessions Cases were tried by three different Courts. By this application, the applicant has prayed for directions to treat all the three sentences concurrently and not subsequently / separately.

. In the affidavit-in-reply filed on behalf of the State it has been stated that the benefit of Section 427(1) of Cr.P.C. cannot be extended to the applicant. The learned APP has referred to the judgment of the Supreme Court in the case of Raghbir Singh v. State of Haryana **[AIR 1984 SC 1796]** and the judgment of this Court in the case of Ramesh Krishna Sawant Vs. State of Maharashtra **[1994 Mh.L.J. 825]**. In the case of Raghbir Singh (Supra) their Lordships observed,

> "... Hence in order to secure the benefit of section 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation, inquiry or trial of the case in which he is later on convicted and sentenced. It follows that if a person is undergoing the sentence of imprisonment imposed by a court of law on being convicted of an offence in one case during the period of

investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he was under detention during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under section 428 of the Code i.e. the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well...."

. In the case of Ramesh Sawant (Supra), the Division Bench referred to the Judgment of the

Supreme Court in the case of Mohammed Akhtar Hussain vs. Assistant Collector, Customs **[AIR 1988 SC 2143]** and held that the benefit of Section 427 of Cr.P.C. cannot be extended to an accused if he has been convicted in different trials arising out of different transactions and consequently trial numbers as well pertaining to different police stations and the complaints having been decided by separate judgments.

. In view of the above settled legal position, this application cannot be entertained and the same is hereby rejected.

. The applicant be communicated this decision by post at his present address in the jail concerned by the Registry.

(B.H.MARL